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THE INFLUENCE OF PORNOGRAPHY ON RAPE AND VIOLENCE AGAINST WOMEN: A SOCIAL SCIENCE APPROACH

DANA A. FRAYTAK, ESQ.*

*Before you finish reading this paper, another woman in this
country will be raped.*

I. Introduction

According to the U.S. Department of Justice somewhere in America, a woman is raped every 2 minutes.¹ "Every year approximately 132,000 women report that they have been victims of rape or attempted rape, and more than half of them knew their attackers."² Moreover, it is estimated that two to six times that many women are raped, but do not report it.³ Why? Although many explanations have been offered for the increase in violence against women, a number of writers have indicated that the mass media, and especially pornography, are important contributors to these assaults.⁴ Feminist scholars contend that rapes and violent crimes directed at women occur, in part, because of the dehumanization of women and desensitization of men promulgated by the consumption of pornographic materials. Others disagree. In

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The author would like to thank her parents, grandmother, family and friends for their encouragement, love and support.

¹ RAINN (Rape Abuse and Incest National Network) Statistics, *available at* <http://www.rainn.org/stats.html>

² National Organization of Women (NOW) Homepage, *available at* <http://www.now.org/issues/violence/stats.html>

³ *Id.*

⁴ Edward Donnerstein & Leonard Berkowitz, *Victim Reactions in Aggressive Erotic Films as a Factor in Violence Against Women*, 41 J. Personality & Soc. Psychol. 710 (1981).

1971 the Presidential Commission on Obscenity and Pornography, concluded that there was no direct relationship between exposure to pornography and subsequent sexual crimes.⁵ However, criticisms of the commission's findings (e.g. Berkowitz, 1971; Cline, 1974; Dienstbier, 1977; Wills, 1977) have led several investigators to reexamine the issue.⁶ This latter research indicates that exposure to certain types of erotic materials can increase aggressive behavior.⁷ Most importantly, upon revisiting the topic, the 1986 Presidential Commission on Obscenity and Pornography stated:

In evaluating the results for sexually violent material, it appears that exposure to such materials (1) leads to a greater acceptance of rape myths and violence against women; (2) have more pronounced effects when the victim is shown enjoying the use of force or violence; (3) is arousing for rapists and for some males in the general population; (4) has resulted in sexual aggravation against women in the laboratory.⁸

The Commission concluded that "it is clear that the conclusion of 'no negative effects' advanced by the 1970 Commission is no longer tenable."⁹

Whether, or to what extent, pornography harms women is a topic of ongoing debate in this country.¹⁰ In the last 30 years, legal scholars have dichotomized the issue of pornography as the "Dworkin-MacKinnonites versus the civil libertarians" and suggest

⁵ Donnerstein & Berkowitz, *supra* note 4, at 710 (quoting THE COMMISSION ON OBSCENITY AND PORNOGRAPHY REPORT (1970)).

⁶ Donnerstein & Berkowitz, *supra* note 4, at 710.

⁷ *Id.*

⁸ Attorney General's Comm'n on Pornography, U.S. Dep't of Justice Final Report, 1005 (1986).

⁹ Elizabeth Kirby Fuller, *Holding Producers and Distributors Liable for the Harms of Sexually Violent Pornography through Tort Law*, 5 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 125, 132 (1994).

¹⁰ Pete Marksteiner, *The Ongoing Pornography Debate*, 34 WASHBURN L.J. 49 (1994).

how the law should respond to each of these debate participants.¹¹ However, the most insightful way to resolve this debate might be to look at the information gathered by social scientists on pornography and to determine its effects on women.

Numerous studies have been conducted to study the role of pornography in the etiology and maintenance of sexual crimes.¹² Although all of these approaches have basic flaws, each contributes to the complete picture – providing insight onto the role that pornography consumption plays in contributing to sexual crimes.¹³

In this paper, I argue that courts around the country should put a fair amount of weight on the social scientific evidence on this topic showing that pornography, specifically violent pornography, has a detrimental effect on women. I urge courts, when deciding cases on obscenity and pornography, to look to the data collected which supports the notion that violent pornography has a significant detrimental effect on women.

Section I is an introduction to the debate regarding the effects of pornography on rape and violence against women. Section II deals with the definitions of pornography and other terms important to the pornography debate. Section III reviews various court cases, which have confronted issues regarding the consumption of pornographic materials in our society. It explores the Dworkin/MacKinnon Model Antipornography Civil-Rights Ordinance as well as critic responses to the ordinance and the notion that pornography has had an effect on violence against women. Section IV describes various studies that have been conducted by social scientists, showing a correlation between observing pornographic material and an increase in aggression and a propensity towards violence. Lastly, Section V suggests solutions for reducing the effects and changing society's attitudes about violent pornography, while concluding that it is vital to the safety of women in the United States that courts accept the social

¹¹ Michelle C. Anderson, *Speaking Freely About Reducing Violence Against Women, A Harm Reduction Strategy from the Law and Social Science of Pornography*, 10 U. FLA. J.L. & PUB. POL'Y 173 (1990).

¹² Mary R. Murrin & D.R. Laws, *The Influence of Pornography on Sexual Crimes*, in HANDBOOK OF SEXUAL ASSAULT, 73 (1990).

¹³ Anderson, *supra* note 11, at 176.

science data, and recognize the impact of pornography on aggression as a significant factor in numerous rapes and violence against women crimes thereby upholding laws which protect society from such violence.

II. Defining Pornography

To understand the rhetoric of the pornographic issue, it is first necessary to define the terminology.¹⁴ In this debate, there is often confusion over the usage of different words, as well as many different definitions and uses for the same terms. The terms pornography, obscenity, and erotica have been used almost interchangeably in the pornography debate. Often, they are applied indiscriminately to the same depiction.¹⁵ This leads to confusion.

Traditionally, obscenity has been associated with filth, and with offensiveness, disgust, shame and the idea of breaching an accepted moral standard.¹⁶ Pornography is derived from the Greek *porne* meaning whore and *graphein*, meaning to write.¹⁷ Pornography, then, literally means the "writings of harlots" "or depictions of acts of prostitutes."¹⁸ The term, erotica, also derived from Greek, refers to sexual love and is often used to describe literary or artistic works that have a sexual quality or theme.¹⁹ Webster's New World Dictionary defines pornography as "writings, pictures, etc. intended primarily to arouse sexual desire,"²⁰ while Dworkin-MacKinnon Scholars refer to pornography as "the graphic sexually explicit subordination of women, whether in pictures or in words."²¹ "Two United States governmentally sponsored commissions, renowned feminist authors, scores of social scientists, and many others have attempted to define pornography, and none of their definitions are as simple

¹⁴ Anderson, *supra* note 11, at 174.

¹⁵ DANIEL LINZ & NEIL MALAMUTH, PORNOGRAPHY 2 (1993).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ WEBSTER'S NEW WORLD DICTIONARY 1109 (2d ed. 1984).

²¹ Anderson, *supra* note 11, at 176.

as Webster's."²² In 1986, the U.S. Attorney General's Commission on Pornography issued a report in which it attempted to define pornography.²³ The Commission created three subclassifications of pornography; (1) sexually violent material; (2) non-violent materials depicting degradation, domination, subordination, or humiliation; and (3) non-violent and non-degrading materials.²⁴ "The first category, sexually violent material, described depictions involving sadomasochism (torture, bondage, beatings and so on); sexual assault (the rape myth theme); and sexual activity, or 'sexually suggestive nudity' combined with extreme violence such as murder or disfigurement."²⁵ The commission described the second category, nonviolent degradation and subordination oriented material, as the degradation of people, most often women, and material that, although not violent, depicts people usually women as existing solely for the sexual satisfaction of others, usually men, or that depicts people in decidedly subordinate roles in their sexual relations with others, or that depicts people engaged in sexual practices that would to most people be considered humiliating.²⁶ The third category, non-violent degrading material, was described as "materials in which the participants appear to be fully willing participants occupying substantially equal roles in a setting devoid of actual or apparent violence or pain."²⁷ That same year, *American Booksellers Association v. Hudnut*,²⁸ presented the Supreme Court of the United States with another proposed definition of pornography/obscenity.²⁹ The proposed definition embodied the first two categories articulated by the Commission, and included elements from a fourth category that the 1986 Commission considered too insignificant to cause concern,

²² Marksteiner, *supra* note 10, at 50.

²³ *Id.* (citing FRANKLIN MARK OSANA & SARA LEE JOHNSON, 431 SOURCEBOOK ON PORNOGRAPHY (1989)).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Marksteiner, *supra* note 10, at 50 (quoting the Att'y Gen. Comm'n on Pornography, U.S. Dep't of Justice Final Report (1986)).

²⁷ *Id.*

²⁸ 475 U.S. 1001 (1986).

²⁹ Marksteiner, *supra* note 10, at 52.

nudity.³⁰ The *Hudnut* standard proposed to define pornography as "the sexually explicit subordination of women, graphically depicted, whether in pictures or in words...[including situations such as when] women are presented dehumanized as sexual objects...women's body parts...are exhibited, such that women are reduced to these parts...women are presented as in postures of sexual submission or sexual servility...women are presented as whores by nature...women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes those conditions sexual."³¹

Finally the Rape Myth, which is referred to throughout this paper, is best defined as the notion that "(1) only women with 'bad' reputations are raped; (2) women are prone to sexual fantasies; (3) women precipitate rape by their appearance and behavior; and (4) women, motivated by revenge, blackmail, jealousy, guilt, or embarrassment falsely claim rape after consenting to sexual relations."³² "It is the belief that women bring on rape themselves through their clothing, demeanor, being alone, drinking and being out late at night."³³ It also includes the belief that women, although initially reluctant, eventually give in and express pleasure about being raped.³⁴ None of these myths survives scrutiny. In fact, empirical research indicates the exact opposite of these claims.³⁵ Furthermore, there is common belief, that a typical rape is one that occurs late at night, in an abandoned and isolated location, with a stranger, usually an armed black male, "jumping out of the bushes" and attacking innocent white women. In reality, this scenario is atypical to most rapes and sexual attacks on women. "Rapes, are more likely to take place in a familiar setting, by a known person" and by a person of the same race.³⁶

³⁰ *Id.*, at 52.

³¹ Martin D. Schwartz, *Censorship of Sexual Violence: Is the Problem Sex or Violence?*, 11 HUMAN. & SOC'Y 212 (1987).

³² Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013, 1025 (1991).

³³ Anderson, *supra* note 11, at 199.

³⁴ *Id.* at 202.

³⁵ Torrey, *supra* note 32, at 1025.

³⁶ Anderson, *supra* note 11, at 200.

III. How United States Courts Have Dealt With Social Science Evidence in Determining the Effects of Pornography on Women

In reviewing numerous cases dealing with obscene and pornographic materials, I have discovered there is no court in this country which has used social scientific evidence to support a finding that pornography negatively effects women. Nor has there been any United States appellate court to uphold a "harm to women" reasoning in support of female pornography ban laws.

*United States v. Roth*³⁷ was an appeal by defendant, Samuel Roth from his conviction for violation of 18 U.S.C. 1461 (mailing of books, periodicals, and photographs and circulars advertising some of them) alleged to be obscene, lewd, lascivious, filthy and of an indecent character.³⁸ The opinion acknowledged that for the first time, studies were "being made, through such scientific skills as exist, concerning the impact of the obscene, in writings and other mass media, on the mind and behavior of men, women and children."³⁹ In upholding the conviction and constitutionality of the statute, the court alluded to the importance of social science research, explaining, "when deciding such cases, courts must take pause because of their lack of knowledge of the social bearing of this problem, or consequences of such an act."⁴⁰

Circuit Judge Frank, however in his concurrence, expressed disappointment towards his colleagues for passing on the constitutionality of the statute. He explained that in their decision, the majority failed to consider that there was no adequate knowledge available concerning the effects on the conduct of normal adults of reading or seeing the "obscene," and that no studies existed which discussed the effect of obscenity on adult conduct, specifically supporting the conclusion that the reading or seeing of obscene material by normal adults induces anti-social

³⁷ 237 F.2d 796 (2d Cir. 1956).

³⁸ *Id.*

³⁹ *Id.*, at 799 (quoting *Brown v. Kingsley Books, Inc.*, 134 N.E.2d 461, 463 (1956)).

⁴⁰ *Id.*

conduct.⁴¹ When he wrote, "maybe someday we will have enough reliable data to show that obscene books and pictures tend to influence...sexual conduct adversely," he was convinced that the pertinent psychological literature of the day was not it.⁴²

While the United States Supreme Court ultimately upheld the Second Circuit's *Roth* decision,⁴³ concluding that "obscenity was not within the area of constitutionally protected speech or press," and dictating that the test for obscenity as being a consideration of the work as a whole, Justice Douglass (joined by Justice Black) dissented, citing the same data as Judge Frank in his concurrence.⁴⁴ He explained,

If we were certain that impurity of sexual thoughts impelled to action, we would be on less dangerous ground in punishing the distributors of this sex literature. But it is by no means clear that obscene literature, as so defined, is a significant factor in influencing substantial deviations from the community standard. [T]he absence of dependable information on the effect of obscene literature on human conduct should make us wary. It should put us on the side of protecting society's interest in literature, except and unless it can be said that the particular publication has an impact on action that the government can control.⁴⁵

A. Model Antipornography Civil-Rights Ordinance

After *Roth*, numerous cases addressed the issues of obscenity and indecent material,⁴⁶ including the 1973 Supreme Court case of *Miller v. California*.⁴⁷ In *Miller*, the Supreme Court

⁴¹ *Id.* at 801.

⁴² *Id.* at 816.

⁴³ *Roth v. United States*, 354 U.S. 479 (1957).

⁴⁴ *Id.* at 510-11.

⁴⁵ *Id.*

⁴⁶ See generally, *Paris Adult Theater v. Slaton*, 413 U.S. 49 (1973); *New York v. Ferber*, 458 U.S. 747 (1982).

⁴⁷ 413 U.S. 16, 24 (1973).

defined obscenity as "material taken as a whole, [which] appeals to a purient interest...[and which] depicts or describes, in a patently offensive way, sexual conduct...[and] taken as a whole, lacks serious literary, political, or scientific value."⁴⁸ In addition, the court created a test for determining whether a given material is obscene.⁴⁹ However, none of these cases focused entirely on women and the violence perpetrated against them as a result of pornography. In the early 1980's, feminist leaders Catherine MacKinnon and Andrea Dworkin created the "Model Antipornography Civil-Rights Ordinance," in an attempt to provide women with a legal remedy for harms inflicted upon them as a result of pornography. Because it was the first time anyone had directly approached the subject of pornography and its negative effects and for feminists, it was a revolutionary step in the war against pornography. The ordinance defined "pornography" as "the graphic sexually explicit subordination of women through pictures and/or words."⁵⁰ In addition, it set forth the causes of actions under which a woman, man or child could bring a suit.⁵¹ These actions included (1) coercion into pornography; (2) forcing pornography onto a person; (3) assault or physical attack due to pornography; (4) defamation through pornography; and (5) trafficking in pornography.⁵² Moreover, the ordinance, under its "Enforcement" provision, set forth-specific relief for victims.⁵³

On December 30, 1983, prompted to act as a result of the atrocities committed in *Minnesota v. Herberg*,⁵⁴ Minneapolis, Minnesota became the first city in the United States to consider and adopt a form of the MacKinnon Ordinance.⁵⁵ In *Herberg*, a 39-year-old sex offender while driving on a July afternoon spotted a 14-year-old girl on her bicycle.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Andrea Dworkin & Catherine MacKinnon, *Pornography & Civil Rights: A New Day for Women's Equality* (1988), in FEMINIST JURISPRUDENCE 321, 322-3, (MARY BECKER et al., eds., 1994).

⁵¹ *Id.*

⁵² *Id.* at 323-324.

⁵³ *Id.*, at 324.

⁵⁴ 324 N.W.2d 346 (1982).

⁵⁵ Dworkin & MacKinnon, *supra* note 50, at 321.

He stopped and, using a knife, forced the girl into his car, tied her hands with her belt, pushed her on the floor and covered her with a blanket. He then drove a short way and pulled onto a gravel road, where he stopped. Then he used a knife to cut off her clothes. He then inserted his fingers into her vagina. He also cut her vagina with the knife. Feeling perhaps that they were in an area where they might be observed, the defendant had the victim dress herself and proceeded to drive down to a nearby gravel pit. Then he ordered her to remove her clothes again and forced her to remove his also. He then made her stick a safety pin into the nipple of her left breast. After hitting her, he forced her to commit fellatio and to submit to anal penetration. He made her use a cigarette to burn herself on a breast and near the pubic area. He defecated on her face, forcing her to ingest some of the excrement and urine. He then made her urinate into a cup and drink it. He then took a string from her blouse and choked her to the point of unconsciousness, leaving burn marks on her neck. Then after cutting her with a knife in a couple of places, he drove her back to the area from which he abducted her and released her. It appears that in committing these various acts, the defendant was giving life to some stories which he had read in various pornographic books. These books, which were seized from the defendant following his arrest, bear titles such as *Violent Stories of Kinky Humiliation*, *Violent Stories of Dominance and Submission*, *Bizarre Sex Crimes: Shamed Victims*, and *Watersport Fetish: Enemas and Golden Showers*.⁵⁶

Two days after conducting public hearings, the Minneapolis City Council found that pornography violated women's civil

⁵⁶ *Minnesota v. Herbert*, 324 N.W.2d at 347 (1982).

rights.⁵⁷ Unfortunately, after several months of political debate the ordinance was ultimately struck down July 13, 1984, with the mayor vetoing the law.⁵⁸

Subsequently, a similar ordinance was enacted by the Indianapolis City Council in 1984, but later declared unconstitutional in *American Booksellers Ass'n, Inc. v. Hudnut*.⁵⁹ At issue in *Hudnut* were sections of Chapter 16 of the Code of Indianapolis that addressed pornography as sex discrimination.⁶⁰ Noting that pornography, as a practice, discriminates against women, the ordinance purported to redress actions through the administrative and judicial methods used for other discrimination.⁶¹ In striking down the ordinance on constitutional grounds, the court stated that "[t]he offense of forcing pornography on an unwilling participant is hard to assess..."⁶²

Even though the *Hudnut* court "accepted the premises of the ordinance, i.e. that depictions of subordination lead to employment discrimination, battery, rape and "harm women's opportunities for equality," it nonetheless found the First Amendment superior to the ordinance's attempt to obtain equality for women."⁶³ The court noted that pornography is essentially speech and the unhappy effects it causes depend on mental intermediation.⁶⁴ It went on to explain there are many forms of speech that influence our culture and shape our socialization and this speech [pornography], however insidious, is protected.⁶⁵ Feminist and anti-pornography advocate, Catherine MacKinnon rejects this analysis, believing that pornography is more actlike,

⁵⁷ Dworkin & MacKinnon, *supra* note 50, at 321.

⁵⁸ *Id.*

⁵⁹ *Am. Booksellers Ass'n, Inc. v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *affirmed mem.*, 475 U.S. 1001 (1986).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 326-29.

⁶³ BECKER, *supra* note 50, at 347.

⁶⁴ *Hudnut*, 771 F.2d at 329-30

⁶⁵ *Id.*

than thoughtlike.⁶⁶ She analogizes the court's speech argument regarding pornography to segregation, stating:

Segregation expresses the idea of the inferiority of one group to another on the basis of race. That does not make segregation an idea. A sign that says "Whites Only" is only words. Is it therefore protected by the First Amendment? Is it not an act, a practice, of segregation because what it means is inseparable from what it does? *Law* is only words.⁶⁷

Despite the fact that some state courts and legislatures have looked somewhat unfavorably upon the Anti-pornography Ordinance, cities have not been discouraged from introducing similar legislation. Several other communities around the country continue to strengthen their efforts of protecting women by adopting comparable ordinances. On November 8, 1988, 62% of the voters in Bellingham, Washington affirmed a referendum adopting an "anti-pornography" law.⁶⁸ However, that ordinance was later declared unconstitutional in *Village Books v. City of Bellingham*.⁶⁹ Furthermore, the MacKinnon/Dworkin Ordinance has been considered for adoption in Cambridge, Massachusetts, Los Angeles, California, Madison, Wisconsin, the Commonwealth of Massachusetts, Sweden, Germany, New Zealand and the Philippines.⁷⁰

B. Critic Responses

Despite the strong support of the feminist stance against violent pornography, there are those who believe that censoring pornography will not reduce violence and that it would go against

⁶⁶ Catherine A. MacKinnon, *Francis Biddle's Sister: Pornography, Civil Rights and Speech*, in FEMININE JURISPRUDENCE: TAKING WOMEN SERIOUSLY 325, 333.

⁶⁷ *Id.*, at 334.

⁶⁸ BECKER, *supra* note 50, at 321.

⁶⁹ No. 88-1470 (W.D.Wash.) Feb. 9, 1989.

⁷⁰ Becker, *supra* note 50, at 322.

the tenets of the First Amendment. Moreover, they argue that the empirical data do not support a correlation between pornography and its effects on rape and violence against women.

Nadine Strossen, first female President of the American Civil Liberties Union, says censorship will not reduce violence against women.⁷¹ She argues, that contrary to MacKinnon and Dworkin's assertions, laws that allow women to take civil action against anyone involved in the production, sale, or distribution of pornography on the grounds that they had been hurt by such materials, would undermine rather than advance important women's rights and human right's causes.⁷² To justify censoring pornography on the rationale that it would reduce violence or discrimination against women, one would have to provide actual support for the assumptions, she argues.⁷³ There is no credible evidence that shows exposure to sexist, violent imagery leads to sexist, violent behavior.⁷⁴ Moreover, they fear the "censorship of pornography could become a tool with which to harass feminist or other progressive movements."⁷⁵

Critics rebuke empirical evidence gathered on this subject, claiming flawed procedures and failure to substantiate a causal connection between pornography and violence.⁷⁶ They argue, "any correlation between the availability of sexual materials and the rate of sex offences could also reflect an independent factor that causes increases in both."⁷⁷ Cynthia Gentry's correlation studies have identified an independent variable in geographic areas that have high rates of both the circulation of sexually explicit magazines and sexual violence: namely a high population of men between the

⁷¹Nadine Strossen, *Why Censoring Pornography Would Not Reduce Discrimination or Violence Against Women*, 156 in *WOMEN, MEN AND GENDER* 170 (Mary Roth Walsh, ed. 1997).

⁷²*Id.* at 70.

⁷³*Id.*

⁷⁴*Id.*

⁷⁵Thomas I. Emerson, *Pornography and the First Amendment: A Reply to Professor MacKinnon*, 3 *YALE L. & POL'Y REV.* 130, 138 (1984).

⁷⁶Strossen, *supra* note 71, at 172.

⁷⁷*Id.* at 173.

ages of 18 and 34.⁷⁸ Accordingly, Joseph Scott and Loretta Schwalm found that communities with higher rape rates experienced stronger sales of not only porn magazines, but also of all male oriented magazines, including Field and Stream.⁷⁹ This indicates there may be a third independent variable that is responsible. Similarly, Larry Baron and Murray Strauss have noted that areas where both sexual materials and sexual aggression are prevalent are also characterized by a "hypermasculated or macho cultural pattern," which may be the underlying causal agent.⁸⁰

"In 1990, Baron examined the idea that pornography contributes to sexual discrimination in a correlation study using pornographic magazine circulation rates and several indices of inequality of the sexes.⁸¹ Specifically, he tested the hypothesis: The higher the circulation rate of pornographic magazines the lower the level of gender equality.⁸² He constructed an index composed of 24 indicators of status of woman relative to men in politics, economics, and legal rights.⁸³ In addition, several control variables, including a violence index, measures of acceptance of violence in each state, and the number of Southern Baptists in the state, were included in the analysis.⁸⁴ The latter was included because many followers of that faith believe in the natural inferiority of women.⁸⁵

Baron's results showed exactly the opposite of what would be predicted by feminists.⁸⁶ There was a strong positive correlation ($r = .56$) between circulation rates of pornographic magazines and

⁷⁸ Cynthia Gentry, *Pornography and Rape: An Empirical Analysis*, 12 DEVIANT BEHAVIOR: AN INTERDISCIPLINARY JOURNAL 277-88 (1991).

⁷⁹ Joseph E. Scott & Loretta A. Schwalm, *Pornography and Rape: An Examination of Adult Theater Rates and Rapes by State*, in CONTROVERSIAL ISSUES IN CRIME AND JUSTICE (Joseph E. Scott & Travis Hirchi, eds., (1988).

⁸⁰ Larry Barron & Murray Strauss, *Four Theories of Rape: A Macrosociological Analysis*, 34 SOCIAL PROBLEMS 467 (1987).

⁸¹ *Id.* at 50.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

gender equality in a state.⁸⁷ But that was not the strongest predictor of scores on the gender equality index.⁸⁸ The highest correlation was found between the presence of Southern Baptists in a state and that state's gender equality index.⁸⁹ The more Southern Baptists in the state the lower the gender equality.⁹⁰

Baron did not conclude that pornography consumption *causes* greater gender equality.⁹¹ Instead, he maintains that "the third variable – political tolerance – may account for the abundance of pornography that is coupled with greater gender equality."⁹² In politically tolerant states there is both greater protection of free speech rights, including a lenient attitude toward objectionable speech such as pornography, and greater support for equality between men and women."⁹³ This is a strong argument for protecting unpopular speech, such as pornography. These critics explain, only through discussion and the exchange of a free market place of ideas, will the problem of violent pornography be eradicated.

Moreover, critics argue, it is not pornography that has a negative effect on our society, but rather it is our mainstream media. Pornography, they explain, constitutes only a small subset of the sexist or violent imagery that pervades our culture and media.⁹⁴ New York Law School Professor, Carlin Meyer, conducted a comprehensive survey of the views of women's sexuality, status, and gender roles that are purveyed in "non-pornographic" media.⁹⁵ She concluded:

Today, mainstream television, film, advertising, music, art, and popular (including religious) literature are the primary propagators of western views of sexuality and sex roles. Not only do we

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Strossen, *supra* note 71, at 178.

⁹⁵ *Id.*

read, see and experience their language and imagery more often and at earlier ages than we do most explicit sexual representation, but precisely because mainstream imagery is ordinary and everyday, it more powerfully convinces us that it depicts the world as it ought to be.⁹⁶

Other cultural and media analysts have likewise concluded that more damaging sexist imagery is more broadly purveyed through mainstream, non-sexual representations.⁹⁷ Additionally, social science researchers have found that acceptance of the rape myth and other misogynistic attitudes concerning women and violence "are just as likely to result from exposure to many types of mass media – from soap operas to popular commercial films – as from even intense exposure to violent, misogynistic sexually explicit materials."⁹⁸ These critics advise if we really wanted to purge all sexist, violent representations from our culture, we would have to cast the net far beyond pornography, notwithstanding how comprehensive and elastic that category is.⁹⁹

Furthermore, critics argue the censorship of pornographic material would probably only drive pornography underground thus making it more desirable.¹⁰⁰ This forbidden fruit effect would increase the attention that a targeted work receives. They explain, censorship of pornography would do women more harm than good, as the lack of available pornographic material may lead to male frustration and subsequent aggressive behavior.¹⁰¹

Finally, First Amendment critics argue that government suppression of pornography can not be justified under the current First Amendment doctrine.¹⁰² "The core element in First

⁹⁶ Carlin Meyer, *Sex, Censorship, and Women's Liberation*, 72 TEX. L. REV. 1097 (1994).

⁹⁷ Strossen, *supra* note 71, at 178.

⁹⁸ EDWARD DONNERSTEIN, ET AL., *THE QUESTION OF PORNOGRAPHY: RESEARCH FINDINGS AND POLICY IMPLICATIONS*, 107 (1987).

⁹⁹ Strossen, *supra* note 71, at 178.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 179.

¹⁰² Emerson, *supra* note 75.

Amendment theory is that the impact of speech – whether considered good, bad, or indifferent – cannot be invoked as a basis for government control of speech. Speech, or more generally expression, occupies a specially protected place in a democratic society.¹⁰³ It follows that, as a general proposition, speech cannot be prohibited, curtailed or interfered with by government authorities.”¹⁰⁴ Although there are a few exceptions, to the constitutional protection afforded freedom of expression pornography, this is not one of them.

Thomas I. Emerson, Yale Law School Professor and First Amendment supporter, has criticized MacKinnon’s Anti-pornography ordinance saying, “there is no way that her solution to the pornography problem can be sustained.”¹⁰⁵ He explains, the reason for supremacy of freedom of expression in our constitutional hierarchy is that it is essential to the operation of the democratic practice.¹⁰⁶ “The values served by a system of free expression – individual self-fulfillment, advancement of knowledge, participation in self-government, and promotion of consensus by non-violent means – form the bedrock of our government. The state must seek to achieve its social goals by methods other than the suppression of expression. Were it otherwise, the government could readily outlaw or regulate expression that hampered the effectiveness of government operations, urged basic reform of our society, opposed government policies abroad, or cast aspersions on fellow citizens. Clearly the suppression of pornographic speech, on the ground that it causes or reflects discrimination against women, would run afoul of the basic mandate of the First Amendment.”¹⁰⁷

Although the Supreme Court has made some exceptions to the protection of freedom of expression, “it has never countenanced any degree of control that would create as gaping a hole in our system of freedom of expression as would the

¹⁰³ *Id.* 132-133.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 132.

¹⁰⁶ *Id.* at 133.

¹⁰⁷ *Id.* 132-133.

attempted suppression of "pornography."¹⁰⁸ "The exception that bears the closest resemblance to the proposed ban on pornography is found in the law concerning obscenity."¹⁰⁹ The Supreme Court has ruled that the government may prohibit the dissemination of materials "which taken as a whole, appeal to the 'prurient' interest in sex, which portray sexual conduct in a patently offensive way, and which, when taken as a whole, do not have serious literary, artistic, political or scientific value."¹¹⁰ The theory upon which the Supreme Court permits the suppression of obscenity, as thus defined, is the legal fiction that "... obscenity is not within the area of Constitutionally protected speech or press."¹¹¹

A second exception to the general rule that expression is entitled to the full protection of the First Amendment occurs in the case of expression by, or directed to, children. In *New York v. Ferber*,¹¹² "the Supreme Court upheld a New York statute that prohibited the use of children in 'sexual performance' and in aid of that provision, prohibited dissemination of materials depicting sexual performances by children. The validity of such a measure rests upon the proposition that children are not and cannot be full participants in the system of freedom of expression. That system presupposes a maturity of understanding and judgment that children do not possess. It is this maturity that separates adults from children and because adults have the capability to decide what materials they view, it is unconstitutional to prohibit them from doing so. Other exceptions to full protection under the First Amendment are based on doctrines pertaining to libel, clear and present danger, and regulation of the time, place and manner of expression."¹¹³

None of these theories justifies the relaxation of the traditional guarantees of the First Amendment in the case of pornographic materials.¹¹⁴ Libel laws deal exclusively with the

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Miller v. California*, 413 U.S. 15, 24 (1973).

¹¹¹ *Roth*, 354 U.S. at 485.

¹¹² 458 U.S. 747 (1982).

¹¹³ Emerson, *supra* note 75.

¹¹⁴ *Id.*

protection of reputation against false statements and are narrowly circumscribed.¹¹⁵ The clear and present danger exception is applicable only to advocacy that is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."¹¹⁶ "Pornography is not directed producing 'imminent lawless actions,' nor is there a persuasive evidence that it is "likely" to do so, except possibly in a most aberrational case."¹¹⁷

Time, place and manner regulations are sanctioned primarily in situations where exercise of the right to freedom of expression creates a physical conflict with the exercise of other rights, such as the use of a public street for a demonstration in a way that interferes with normal traffic. Anti-pornography measures are not concerned with time, place and manner but with content.¹¹⁸

Supporters contend the nearest analogy to what is proposed in the Antipornography Ordinance, "would be an official enactment prohibiting all expression that promoted or encouraged racism in our society. Yet, the laws, constitutional and statutory, that attempt to eradicate racism in our county have never been carried to such a point. They deal with discriminatory acts, not the expression on discriminatory beliefs, opinions, ideas or attitudes."¹¹⁹ MacKinnon's Model Anti-pornography Ordinance's banning pornography not only "fails to fit within any of the exceptions to protection under the first amendment, but relies heavily on the injunctive powers of the courts."¹²⁰ There is crippling form of 'prior restraint' that seeks to suppress expression in advance of its publication or dissemination."¹²¹ In the absence of the

¹¹⁵ *Id.*

¹¹⁶ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

¹¹⁷ Emerson, *supra* note 75.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 130-139.

¹²⁰ *Id.*

¹²¹ *Id.* at 130-139.

aforementioned exceptions, the United States Supreme Court is unwilling to extend the protections that far.

IV. Social Scientific Research on Pornography and Its Effects on Violence Against Women

Social scientists, in an attempt to demonstrate a correlation between pornography and violence, have used a number of methods to prove their positions.¹²² "[P]roponents . . . commonly cite proof in one of three ways: anecdotal evidence, correlation statistics, and scientific evidence."¹²³

A. Anecdotal Evidence

"The anecdotal argument is most often made shortly following some media blitz in which an apprehended serial killer . . . 'describes the effect pornography had on him.'¹²⁴ One example of this involved serial killer Ted Bundy.¹²⁵ "Bundy detailed his obsession with violent pornography and stated at pornography was at least partially responsible for the brutal monstrosities he committed."¹²⁶ Although the bulk of social science evidence disputes such anecdotal evidence, virtually all social science commentators agree that images of sex meshed with overt violence have a tendency to negatively affect the observer in certain situations.¹²⁷

¹²² MARKSTEINER, *supra* note 10, at 56.

¹²³ *Id.*

¹²⁴ H.S. Kant & J.J. Goldstein, *Exposure to Pornography and Its Effects in Crime and Society*, in MARKSTEINER, *supra* note 10, at 56.

¹²⁵ MARKSTEINER, *supra* note 10, at 56.

¹²⁶ *Id.*

¹²⁷ JVP Check & N. Malamuth, *Pornography Effects & Self-Reported Likelihood of Committing Acquaintance Rape*, Presentation at the Meeting of the Midwestern Psychological Association (Minneapolis, Minn. 1982), in, MARKSTEINER, *supra* note 10, at 56.

B. Correlation Statistics

Several studies (Baron, 1990; Baron and Strauss, 1984) have shown that pornography and rape rates are positively related.¹²⁸ In their 1984 study, Larry Baron and Murray Strauss, in an attempt to account for the differences in reported rape cases in the 50 states in the United States, developed several indices to measure state-by-state differences in rape rate.¹²⁹ One of these was the number of copies of sex-oriented magazines sold per capita in each state.¹³⁰ This index was calculated by looking at the sales (subscription and newsstand) of eight magazines: *Chic*, *Club*, *Gallery*, *Genesis*, *Hustler*, *Oui*, *Penthouse*, and *Playboy*.¹³¹ In 1979, there was a highly significant correlation between of .63 between sex magazine circulation and rape rates.¹³² The correlation between rape and magazine circulation in 1980 was .55.¹³³ A more recent analysis of rape rates between 1980 and 1982 showed a correlation with sex magazine circulation of .64.¹³⁴ Although these numbers are superficially significant, they are not conclusive to prove there is a direct causation between sexually explicit material and gender motivated crimes. The high rates may be attributed to a third variable, unrelated to pornographic material.

In 1984, Mimi H. Silbert and Ayala M. Pines conducted a survey on prostitutes to determine how pornography had affected their lives.¹³⁵

This study involved 200 juvenile and adult, current and former, women street prostitutes in the San

¹²⁸ Larry Baron & M.A. Strauss, *Pornography and Gender Equality: An Empirical Analysis*, 27 J. of Sex Res., 363-380 (1984), in DANIEL LINZ ET AL., *PORNOGRAPHY* 34 (1993).

¹²⁹ Larry Baron & M.A. Strauss, *Sexual Stratification, Pornography, and Rape in the United States*, in DANIEL LINZ ET AL., *PORNOGRAPHY* 34 (1993).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Mimi H. Silbert & Ayala M. Pines, *Pornography and Sexual Abuse of Women*, 10 SEX ROLES 857, 863-66 (1984) in, *FEMINIST JURISPRUDENCE*, (MARY BECKER, ET AL. EDS. 1994).

Francisco area and was aimed at studying sexual abuse of street prostitutes both prior to and following entrance into prostitution.¹³⁶ The youngest subject was 10 and the oldest was 46; almost 60% of the current prostitutes were under the age of 16.¹³⁷ The racial make-up was 69% white, 18% Black, 11% Hispanic, 2% American Indian, and 1% Asian.¹³⁸

The study generated an enormous amount of data, qualitative as well as quantitative, documenting stunning amounts of sexual abuse of street prostitutes as part of their job, outside of their working environment, and in their childhood prior to entering prostitution.¹³⁹ Many of the open descriptions of these sexually assaults made reference to the role played by pornography. These references were unsolicited by the interviewers.¹⁴⁰ Since the relationship between sexual abuse and pornography was unexpected, no one addressed it directly.¹⁴¹ Out of 193 cases of rape, 24% mentioned allusions to pornographic material on the part of the rapist.¹⁴² This figure is even more significant when it is understood that these comments were made by respondents without solicitation, or reference to the issues of pornography by the interviewer.¹⁴³ The comments followed the same pattern: the assailant referred to pornographic materials he had seen or read and then insisted that the victims not only enjoyed the rape but also the extreme violence.¹⁴⁴ The following is a typical comment reported by victims as one in which the assailant made reference to his prior use of pornography:

¹³⁶ BECKER, *supra* note 50, at 314.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 315.

'I know about all you bitches, you're no different; you're like all of them. I seen it in all the movies. You just love being beaten (He then began punching the victim violently).¹⁴⁵ I just seen it again in that flick. He beat the shit out of her while he raped her and she told him she loved it; you know you love it; tell me you love it.'¹⁴⁶ The assailant continued to beat and slap the woman while raping her, repeating his demand that she say she loved it, just like the woman he saw in the movies.¹⁴⁷ In the majority of the cases, there were no distinctive features about the victims, their situations, or the factors of the rape, which could account for the assailants' mentioning their involvement with pornography.¹⁴⁸

C. Scientific Studies

Laboratory experiments constitute a majority of the research done in the social science arena to support the pornography argument. These types of investigations have been aimed primarily at the question of whether sexual scenes can influence aggressive behavior generally.¹⁴⁹ Several laboratory studies, mostly using male college students, have found harmful effects from viewing sexual violence.¹⁵⁰ "The typical laboratory experiment is conducted on college freshman and sophomore psychology students."¹⁵¹ The two most frequently relied upon testing methods employ use of the "aggression machine" and questionnaires.¹⁵²

In the "aggression machine" test, a male college student volunteer, unaware that he is the subject of the experiment, is

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Donnerstein & Berkowitz, *supra* note 4, at 710.

¹⁵⁰ *Id.*

¹⁵¹ MARKSTEINER, *supra* note 10, at 58.

¹⁵² *Id.*

asked to administer an electric shock to a confederate, after viewing sexually explicit and violent materials.¹⁵³ While no shock is administered, the test measures the willingness of the subject to administer the shock.¹⁵⁴

In 1970, Tannenbaum, by examining the effects of various sexual communications on aggressive behavior (specifically the willingness of a person to administer electric shocks to another person), concluded there was a significant detrimental effect on subjects who were angered and then exposed to aggressive pornography.¹⁵⁵ In his study, male subjects viewed an erotic film that was accompanied by one of three different audio descriptions.¹⁵⁶ The experimenter prepared these descriptions.¹⁵⁷ The first description was purely sexual,¹⁵⁸ the second description had an aggressive focus;¹⁵⁹ the third version was similar to the second, with the addition of visual displays of the weapons she would use for the aggressive act.¹⁶⁰ The study concluded that when subjects were angered, the two aggressive sex films led to the highest levels of aggression (measured by their willingness to administer shocks) among subjects.¹⁶¹ Tannenbaum's study, largely ignored by the 1970 Commission on Obscenity and Pornography, is now regarded as strong evidence that a combination of sex and violence may lead to subsequent aggressive behavior of males towards females.¹⁶²

In 1983, Edward Donnerstein and Leonard Berkowitz expanded upon Tannenbaum's experiment. In their "Aggression

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ P.H. Tannenbaum, *Emotional Arousal as a Mediator of Erotic Communication Effects. Technical reports of the Presidential Commission on Obscenity and Pornography*, in PORNOGRAPHY 35 (1993).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 35.

¹⁵⁸ Donnerstein & Berkowitz, *supra* note 4, at 710. A woman discusses an upcoming visit by her lover that focuses of sexual aspects of the encounter.

¹⁵⁹ *Id.* The woman discusses the negative treatment by her lover and how she intends to kill him (poison, shoot, or stab) when he arrives.

¹⁶⁰ Tannenbaum, *supra* note 155, at 35.

¹⁶¹ *Id.*

¹⁶² *Id.*

Machine" experiment, the scientists used a shock manipulation test to measure the effects of erotic material on male subjects.¹⁶³ In this test, 80 male college sophomore psychology students were told they would receive extra credit for participating in a study.¹⁶⁴ The men were shown four films.¹⁶⁵ All were 5 minutes in length and because any aggression after the movies could be attributed to the physiological arousal engendered by the observed scene, the films were equalized to contain a similar arousal level.¹⁶⁶ Three of the films were highly erotic in nature but differed in their aggressive content, while the fourth film was neutral with respect to both sex and aggression.¹⁶⁷ The films content were as follows: (1) non-aggressive erotic;¹⁶⁸ (2) aggressive erotic with positive outcome;¹⁶⁹ (3) aggressive erotic with negative outcome;¹⁷⁰ (4) a neutral – non-aggressive, non-erotic film.¹⁷¹

In the Donnerstein/Berkowitz experiment, male subjects were first angered by either a male or female confederate and then shown one of four films.¹⁷² Immediately after the seeing their respective movies, each man had the opportunity to punish the confederate in a socially sanctioned manner.¹⁷³ A shock test was administered to confederates in an attempt to measure aggression by measuring the shock intensity delivered to aggressive target.¹⁷⁴ After viewing the films, the men were given a questionnaire and

¹⁶³ Donnerstein & Berkowitz, *supra* note 4, at 710.

¹⁶⁴ *Id.* at 713.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Donnerstein & Berkowitz, *supra* note 4, at 710. Young couple engaged in consensual sexual intercourse.

¹⁶⁹ *Id.* A young woman comes to study with 2 men. Both men have been drinking and when she sits between them gets shoved around and forced to drink. She is then tied up, stripped, slapped, and sexually attacked. In the end, the movie shows her smiling and in no way resisting the 2 men. Film reports the woman, by the end, becomes a willing participant.

¹⁷⁰ Same plot as movie #2 but in the end, woman is shown suffering. Film reports that the woman is feeling humiliated and disgusted.

¹⁷¹ Donnerstein & Berkowitz, *supra* note 4, at 710. *E.g.* a nature scene.

¹⁷² Donnerstein & Berkowitz, *supra* note 4, at 713.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

asked to respond to the film's content.¹⁷⁵ During and after the experiment, the men's blood pressure was taken to measure physical reactions to the films.¹⁷⁶

The experimenter's initial theories/predictions regarding the outcome of the experiment were as follows:

1. Pure sex films would lead to stronger attacks on men not women;
2. Exposure to aggressive erotic movie with positive outcome would lead to a higher level of aggression against women;
3. Exposure to aggressive erotic movie with negative ending will lead to higher levels of aggression but not as high as the aggressive erotic movies.¹⁷⁷

They concluded, as for the first prediction that the results were in the predicted direction, but movie conditions did not differ reliably in the level of aggression against male target.¹⁷⁸ Regarding prediction two, not only were there heightened attacks, but the level of aggression was greater than that received by male targets in the same condition.¹⁷⁹ Finally, the results discovered were highly supportive of prediction three.¹⁸⁰ Donnerstein and Berkowitz wrote that the results of the experiment suggested an aggressive erotic content could increase aggression against women under certain conditions.¹⁸¹ They concluded, the positive ending movie might have lowered men's inhibitions against attacking an available target.¹⁸² In a sense, the movie suggested aggression could be justified.¹⁸³ Moreover, in the negative ending movie, because subjects were angry at the time of movie and thus predisposed to

¹⁷⁵ Donnerstein & Berkowitz, *supra* note 4, at 714.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 715.

¹⁷⁸ *Id.* at 717.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

hurt someone, the film may have evoked a heightened aggressive inclination in the test group.¹⁸⁴

D. Results

The results of all of the aforementioned experiments have important theoretical as well as practical implications.¹⁸⁵ They help us gain a greater understanding of the processes that cause scenes of violence in the mass media to heighten the audience's aggressive inclinations.¹⁸⁶

The relationship between pornography and violence against women is extremely difficult for behavioral scientists to measure.¹⁸⁷ "Obviously, one cannot expose subjects to pornography and then follow them to see if they aggress against women."¹⁸⁸ "Therefore, laboratory researchers rely on 'attitudes, arousal patterns, and aggressive behavior in the laboratory.'¹⁸⁹ Attitudes are usually assessed by various instruments, or scales, which have been developed and tested for significant relationships with the criterion measures.¹⁹⁰ For instance, when asking men if they would rape if they could be assured they would not be punished, researchers can use either a single item to assess likelihood of rape (LR), an additional item to assess likelihood of forced sex (LF), or a three-level hierarchy based on these two items (LFR).¹⁹¹ Also, in questionnaire tests, for example, students are asked to view materials and respond, orally or in written form, to a series of questions.¹⁹² In a method similar to that employed in the

¹⁸⁴ *Id.*

¹⁸⁵ LINZ & MALAMUTH, PORNOGRAPHY, *supra* note 15, at 34.

¹⁸⁶ *Id.*

¹⁸⁷ BECKER, *supra* note 50, at 317.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* (quoting Edward Donnerstein, *Pornography: Its Effect on Violence Against Women*, in, PORNOGRAPHY AND SEXUAL AGGRESSION, 53 (Neil M. Malamuth & Edward Donnerstein eds.) 1984).

¹⁹⁰ BECKER, *supra* note 50, at 317.

¹⁹¹ *Id.* (quoting, Neil M. Malamuth, *The Attraction to Sexual Aggression Scale: Part One*, 26 J. SEX RES. 26 (1989); Neil M. Malamuth, *The Attraction to Sexual Aggression Scale: Part Two*, 26 J. SEX RES. 324 (1989)).

¹⁹² MARKSTEINER, *supra* note 10, at 59.

aggression machine tests, some students are shown control material and others shown explicit sexual materials.¹⁹³ Students are requested to fill out the questionnaires before and after viewing test or control materials to determine the effects of viewing such materials.¹⁹⁴

In the past, these testing methods have been fraught with fallibility.¹⁹⁵ The results were often criticized as being merely "attitudinal," and not indicative of what subjects would actually do in the real world.¹⁹⁶ "Therefore, scientists developed tests to measure physiological responses as well as attitudes."¹⁹⁷ "For instance, studies have compared subjects' self-reported likelihood of raping to see if it is correlated with an erection."¹⁹⁸ "Despite advances in this area, most all of the statistical correlation studies remain vulnerable to criticism. Like lab research, statistical correlation studies do not, by themselves, answer the causal questions in the pornography debate with anything more than moderate persuasiveness."¹⁹⁹ Nonetheless, such studies should be addressed as one of a list of factors to consider within the larger discussion.

Laboratory experiments themselves are often criticized as artificial and vulnerable to demand characteristics, i.e., subjects want to please the researchers and give the answer they think the researcher wants; laboratory settings lack the social controls that are present outside the laboratory.²⁰⁰ Social scientists often circumvent the demand characteristic problem by collecting and analyzing unsolicited information in the form of anecdotal evidence, sworn testimony in public hearings, police reports, studies of perpetrators of sexual violence, and miscellaneous data

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ BECKER, *supra* note 51, at 317.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* (citing Neil M. Malamuth & James V. P. Check, *Penile Tumescence and Perceptual Responses to Rape as a Function of Victims' Perceived Reactions*, 10 J. APPLIED SOC. PSYCH. 528 (1980)).

¹⁹⁹ MARKSTEINER, *supra* note 10, at 61.

²⁰⁰ BECKER, *supra* note 50, at 317.

gathered from the lives of women.²⁰¹ In response to this criticism, Neil Malamuth and James Check created a field experiment to determine the effects of mass media exposure to films showing violent sexuality increased the male subjects' acceptance of interpersonal violence against women and their acceptance of rape myths.²⁰² By collecting data from unbiased sources, this experiment did not expose itself to the aforementioned demand characteristics.

Literally hundreds of studies have now been conducted on aspects of the relationship between pornography and violence against women. Although the results of psychological experiments are not singularly dispositive in the debate about pornography, they are persuasive in narrowly defined discussions within the larger debate. Despite the fact that it is difficult to conclude from one study that pornography conclusively causes violence against women, it is evident through examining a combination of all studies, that there is strong evidence which shows a negative relationship between the two.

Through their studies, two of the major researchers in this area, Neil Malamuth and Edward Donnerstein, reviewed the literature to date.²⁰³ "Malamuth concluded that the studies demonstrated several consistent results: men who viewed pornography (1) became desensitized to women, (2) had an increased likelihood of raping when they had no fear of being caught, (3) were less likely to believe a woman who claims to have been raped, (4) were less likely to impose stiff penalties on rapists, and (5) exhibited increased aggression toward women."²⁰⁴ Donnerstein summarized the findings as having: "a direct causal relationship between exposure to aggressive pornography and

²⁰¹ *Id.* at 318.

²⁰² *Id.* (citing, Neil M. Malamuth & James V. P. Check, *The Effects of Mass Media Exposure on Acceptance of Violence Against Women: A Field Experiment*, 15 J. RES. PERSONALITY 436 (1981)).

²⁰³ *Id.* at 318.

²⁰⁴ *Id.* (citing Neil Malamuth, *Aggression Against Women: Cultural and Individual Causes*, in PORNOGRAPHY AND SEXUAL AGGRESSION, 27-28 (Neil M. Malamuth & Edward Donnerstein, eds., 1984)).

violence against women.”²⁰⁵ Other researchers have discovered various effects of prolonged consumption of common pornography, including the trivialization of both rape and child sex abuse as criminal offenses.²⁰⁶ Prolonged consumption of nonviolent and violent pornography: (1) “promotes insensitivity toward victims of sexual violence”; (2) “promotes men’s belief of having the propensity for forcing particular sexual acts on reluctant sexual partners”; and (3) “promotes men’s belief of being capable of committing rape.”²⁰⁷

V. Conclusion

Sexually violent pornography presents a serious problem to women in our society. Along with physical harms, it also degrades and dehumanizes them. Although United States courts have recognized the effects of pornography on women, they have been reluctant to uphold statutes that punish those who engage in such behavior, citing insufficient data to prove there is a causal link between pornography and violence against women.

Critics of censorship of violent pornography cite studies which say there is no causal connection between pornography and violence against women, yet the studies they cite have as much validity as the anti-pornography studies which show a correlation between pornography and violence against women. While critics continue to argue about the effects of censorship on the First Amendment, social psychologists have been performing research with results too good to ignore.²⁰⁸ It is time to take advantage of this promising research. Moreover, while empirical studies do not in and of themselves settle the questions in the pornography debate, such studies should certainly be a part of the discussion.

²⁰⁵ *Id.* (quoting Edward Donnerstein, *Pornography: Its Effect on Violence Against Women*, in PORNOGRAPHY AND SEXUAL AGGRESSION, (Neil M. Malamuth & Edward Donnerstein, eds.) 1984.)

²⁰⁶ Dolf Zillman, *Effects of Prolonged Consumption of Pornography*, in PORNOGRAPHY: RESEARCH ADVANCES & POLICY CONSIDERATIONS 147, (Dolf Zillman & Jennings Bryant, eds., 1989).

²⁰⁷ *Id.* at 154-55.

²⁰⁸ Anderson, *supra* note 11, at 205.

Although there is no one panacea for this societal problem there are several proposed solutions. While legal and feminist scholars continue the debate on the constitutionality of violent pornographic material, some suggest as we enter the 21st century, that we shift the focus of the debate to how we can immunize our children from the harms of pornography. They contend, by teaching children about the harms of violent pornography early on, we can reshape their beliefs about violence against women.

Others propose an educational approach that would inoculate all potential consumers, not just the young, of media that might otherwise promote sexual violence. They encourage using education to reduce attitudes and behaviors supportive of violence against girls and women in our society. While still others suggest “fighting fire with fire” by exposing people to violent pornography in an attempt to desensitize them from their effects. They argue, encouraging an open discussion of these issues, rather than suppression of such speech, will foster better relations between the sexes and only through such means will the problem of violent pornography be eradicated.

No matter what techniques are employed most agree, the inoculation theory promises the greatest harm reduction strategy by changing attitudes about pornography. These types of educational approaches offer a harm reduction strategy to address the concerns raised by feminists without imposing any restrictions on freedom of speech. Irregardless of the solution, one thing is clear, it is vital to the safety of women in the United States, that courts accept the social science data that has been compiled about this issue and recognize the impacts of violent pornography on aggression as a significant factor in the numerous rapes and violent gender based crimes that occur in this country.

